

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|----|------------------------------|---|--|
| 11 | DAVID RIBOT, PERRY HALL, |) | Case No. CV 11-02404 DDP (FMOx) |
| 12 | JR., DEBORAH MILLS, ANTHONY |) | |
| 13 | BUTLER, JENNIFER BUTLER, |) | ORDER GRANTING DEFENDANTS' MOTION |
| 14 | JONATHAN LUNA and LOIS |) | FOR PARTIAL SUMMARY JUDGMENT; |
| 15 | BARNES, individually, and on |) | DENYING PLAINTIFFS' MOTION FOR |
| 16 | behalf of all others |) | RELIEF UNDER RULES 26 AND 37; |
| 17 | situated, |) | DENYING IN PART PLAINTIFFS' |
| 18 | |) | MOTION TO MODIFY AND CLARIFY |
| 19 | Plaintiffs, |) | CLASS DEFINITIONS; AND GRANTING |
| 20 | |) | DEFENDANTS' MOTION TO DENY |
| 21 | v. |) | CERTIFICATION AS TO 21ST CENTURY |
| 22 | |) | CLASS |
| 23 | FARMERS INSURANCE GROUP, |) | |
| 24 | FARMERS INSURANCE EXCHANGE, |) | [Dkt. Nos. 240, 256, 260, 279] |
| 25 | 21st CENTURY INSURANCE |) | |
| 26 | COMPANY and AIG INSURANCE |) | |
| 27 | SERVICE, INC., |) | |
| 28 | |) | |
| | Defendants. |) | |
| | |) | |
| | |) | |

Before the court is Defendants Farmers Services, LLC, Farmers Insurance Exchange, and 21st Century Insurance Company (collectively, "Defendants")'s Motion for Partial Summary Judgment. (Dkt. No. 279.) Also before the court are Plaintiffs' Motion for Relief under Rules 26 and 37 (Dkt. No. 260); Plaintiffs' Motion to Modify and Clarify Class Definitions (Dkt. No. 240); and Defendants' Motion to Deny Certification as to 21st Century Class

(Dkt. No. 256). Each motion is fully briefed. Having considered the parties' submissions and heard oral argument, the court adopts the following order.

I. Background

A. Procedural Background

On July 17, 2013, this court issued an Order granting Plaintiffs' motion for class certification in part. (Dkt. No. 222.) The class certified in that Order did not include employees of 21st Century Insurance Company ("21st Century"). (Id. at 37-38.) On August 22, 2013, Plaintiffs moved to modify the Rule 23 class definition to include 21st Century employees. (Dkt. No. 240.) Defendants opposed the motion on the ground that Defendants had discovered in August 2013 that the only class representatives employed at any point by 21st Century, Jennifer Butler and Anthony Butler, had released all claims against the company relating to their employment by signing Severance and Release Agreements ("Releases") in exchange for a severance package prior to bringing the instant suit. (Dkt. No. 244.) Plaintiffs did not respond substantively to Defendants' arguments vis-a-vis the Releases in a reply or at the hearing held on September 23, 2013 concerning Plaintiffs' motion to modify the class definition.

On September 24, 2013, this court issued an Order stating: "In light of Defendants' objections [regarding the Releases], the court will take no action relative to Plaintiffs' request to add 21st Century, pending Plaintiffs' response on the waiver issue. The parties are ordered to meet and confer to ensure that Plaintiffs

1 have adequate information on which to base their response." (Dkt.
2 No. 248 at 6.)

3 On February 14, 2014, Defendants filed a Motion to Deny
4 Certification as to 21st Century Class on the basis of the
5 Releases. (Dkt. No. 256.) Shortly thereafter, on February 24, 2014,
6 Plaintiffs filed a Motion for Relief under Rules 26 and 37, in
7 which they argue on various grounds that the court should not
8 consider the Releases for class certification purposes. (Dkt. No.
9 260.)

10 In considering these motions, the court concluded that the
11 matter of the Releases was best addressed on a motion for summary
12 judgment, prior to resolving the question of class certification
13 for the 21st Century employees. Accordingly, on April 14, 2014, it
14 ordered Defendants to file a motion for summary judgment by April
15 29, 2014. (Dkt. No. 278.) That summary judgment motion, along with
16 the three previously filed motions, are now before the court.

17 **B. Relevant Facts**

18 The following is drawn from Defendants' Statement of
19 Uncontroverted Facts (Dkt. No. 279-2) and is not in dispute:

20 Jennifer Butler and Anthony Butler are the only named
21 Plaintiffs who worked for 21st Century. Both worked solely at 21st
22 Century's facility in Woodland Hills, California, which is the only
23 21st Century facility whose employees Plaintiffs seek to include in
24 this action. (See Declaration of Laura Rock in Support of Motion
25 for Partial Summary Judgment ¶ 3.) Anthony Butler worked as an
26 Insurance Representative at the Woodland Hills facility from July
27 15, 2006 until December 4, 2009. (Id. at ¶ 4.) Jennifer Butler

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1 worked as an Insurance Representative at the Woodland Hills
2 facility from March 26, 2007 until December 27, 2009. (Id.)

3 In September 2007, American International Group, Inc. ("AIG")
4 acquired 21st Century. (Id.) In July 2009, Farmers acquired AIG's
5 Personal Auto Group, which included 21st Century and its Woodland
6 Hills facility. (Id.) In the fall of 2009, Farmers announced it was
7 closing the Woodland Hills facility. (Id. ¶ 4.) The facility was
8 closed in January 2010. (Declaration of Daniel C. Whang, Ex. G.)

9 After the acquisition of AIG's Personal Auto Group by Farmers,
10 a severance plan (the "PAG Severance Plan") applicable to Personal
11 Auto Group employees was created. (Id. at ¶ 5 & Ex. B.) The PAG
12 Severance Plan applied to employees who were previously part of the
13 AIG Personal Auto Group and who were involuntarily terminated
14 between July 1, 2009 and June 30, 2010, a period during which the
15 Butlers were laid off. (Id. at ¶¶ 5, 8 & Ex. B.) The PAG Severance
16 Plan incorporated three separate severance policies that had
17 previously applied to employees within the Personal Auto Group,
18 each of which were attached as exhibits to the PAG Severance Plan.
19 (Id. ¶¶ 6, 7 & Ex. B at Appendices A, B and C.) Pursuant to the PAG
20 Severance Plan, any affected employee who was previously part of
21 AIG's Personal Auto Group would receive severance in accordance
22 with one of the three severance policies. (Id. ¶¶ 6, 7 & Ex. B at
23 Appendices A, B and C.)

24 The plan designated Farmers Group, Inc. as the Plan
25 Administrator, and specified that the Plan Administrator would have
26 sole authority and discretion to determine the provision of
27 benefits under the plan. (Id. Decl. ¶ 6 & Ex. B §§ 1.06, 4.01.) For
28 employees working as Insurance Representatives at the Woodland

Hills facility, including the Butlers, Farmers applied the AIG Severance Policy (hereinafter the "Policy"). (Id. at ¶ 8 & Ex. B at Appendix A.)

The Policy provided that eligible employees in the Personal Auto Group would receive two weeks of non-working notice pay regardless of whether or not they signed a Release waiving claims against the company. (Id. Decl. ¶ 9 & Ex. B at Appendix A.) The Policy further provided that eligible employees in the Personal Auto Group who signed a Release, as described below, would also receive (1) two weeks of salary continuation; and (2) additional severance pay that varied depending on an employee's length of service. (Id. ¶ 9 & Ex. B at Appendix A.) Specifically, the Policy provided that,

[I]n return for a release of all claims, the eligible employee will also receive enhanced payments pursuant to the following schedule

Additional 2 weeks' pay continuance **plus:**

| | |
|--|---|
| Less than 1 year of service | 2 more weeks |
| 1 year - less than 2 years of service | 3 more weeks |
| 2 years - less than 4 years of service | 4 more weeks |
| 4 or more years of service | 1 more week |
| | for each year or major fraction thereof |

(Id. Ex. B at Appendix A (emphasis in original).)

The Policy explicitly stated that employees' eligibility for severance beyond the two weeks of notice pay was conditioned upon signing a release of claims:

Are Severance and the Additional 2 Weeks' Pay Conditional Upon A Release?

Yes, these salary continuation payments are conditioned upon the execution of a release. Further, employees may elect to accept these payments in the form of a lump sum payment or

1 extended time on payroll but payments will not be made until
2 the Company has received the signed release and any applicable
waiting periods have expired.

3 (Id. Ex. B at Appendix A.)

4 In order to obtain the additional severance, employees were
5 required to sign the Release presented by the company. The Release
6 included the following pertinent clause:

7 In return for the payments and benefits set forth in the
8 preceding paragraph number 2 above [referring to the "Personal
9 Auto Group Severance Policy"], I agree to waive and release
10 all claims of any kind (whether known or unknown) that I may
11 have against the Company [defined as "Farmers Insurance Group,
12 Inc."], its affiliated companies, and their past or present
13 officers, directors and employees which arise from or relate
14 to my employment with the Company or any of its affiliates or
the termination of my employment with the Company or any of
its affiliates (including, without limitation, claims under
the Age Discrimination in Employment Act, the California Fair
Employment and Housing Act, California Labor Code Section 200
et seq., and any applicable California Industrial Welfare
Commission order).

15 (Id. Decl. Exs. C & E.)

16 Both Jennifer Butler and Anthony Butler signed a Release.

17 (Id.) Based upon their seniority, both received six weeks of
18 additional severance. Anthony Butler signed the Release on December
19 4, 2009 and received a lump sum payment of \$4,572.09. (Id. Exs. C &
20 D.) Jennifer Butler signed the Release on January 22, 2010 and
21 received a lump sum payment of \$4,469.56. (Id. Exs. E & F.)

22 Despite having previously signed the Releases, Anthony Butler
23 and Jennifer Butler filed the instant suit against 21st Century and
24 Farmers on March 22, 2011, alleging statutory and breach of
25 contract claims relating to their employment with 21st Century and
26 Farmers. (Dkt. No 1.)
27
28

1 **II. Motion for Partial Summary Judgment**

2 The court first considers Defendants' Motion for Partial
3 Summary Judgment. (Dkt No. 279.)

4 **A. Legal Standard**

5 Summary judgment is appropriate where the pleadings,
6 depositions, answers to interrogatories, and admissions on file,
7 together with the affidavits, if any, show "that there is no
8 genuine dispute as to any material fact and the movant is entitled
9 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
10 seeking summary judgment bears the initial burden of informing the
11 court of the basis for its motion and of identifying those portions
12 of the pleadings and discovery responses that demonstrate the
13 absence of a genuine issue of material fact. See Celotex Corp. v.
14 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
15 the evidence must be drawn in favor of the nonmoving party. See
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).

17 Once the moving party meets its burden, the burden shifts to
18 the nonmoving party opposing the motion, who must "set forth
19 specific facts showing that there is a genuine issue for trial."
20 Anderson, 477 U.S. at 256. Summary judgment is warranted if a party
21 "fails to make a showing sufficient to establish the existence of
22 an element essential to that party's case, and on which that party
23 will bear the burden of proof at trial." Celotex, 477 U.S. at 322.
24 A genuine issue exists if "the evidence is such that a reasonable
25 jury could return a verdict for the nonmoving party," and material
26 facts are those "that might affect the outcome of the suit under
27 the governing law." Anderson, 477 U.S. at 248. There is no genuine
28 issue of fact "[w]here the record taken as a whole could not lead a

1 rational trier of fact to find for the nonmoving party." Matsushita
2 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

3 It is not the court's task "to scour the record in search of a
4 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278
5 (9th Cir. 1996). Counsel has an obligation to lay out their support
6 clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031
7 (9th Cir. 2001). The court "need not examine the entire file for
8 evidence establishing a genuine issue of fact, where the evidence
9 is not set forth in the opposition papers with adequate references
10 so that it could conveniently be found." Id.

11 **B. Discussion**

12 Defendants contend that they are entitled to summary judgment
13 as to all claims brought by Jennifer and Anthony Butler on the
14 ground that the Butlers executed releases barring their claims in
15 exchange for additional severance. (Motion at 8.) The court agrees.

16 **i. The Releases Cover Plaintiffs' Claims**

17 "In general, a written release extinguishes any obligation
18 covered by the release's terms, provided it has not been obtained
19 by fraud, deception, misrepresentation, duress, or undue
20 influence." Skrbina v. Fleming Companies, 45 Cal.App.4th 1353, 1366
21 (Ct. App. 1996) (citing cases). Plaintiffs do not contend that the
22 Releases were obtained improperly.

23 It appears undisputed that the Releases cover the types of
24 claims asserted by Plaintiffs. As discussed above, in exchange for
25 six weeks of severance pay, the Butlers agreed to:

26 waive and release all claims of any kind ... which arise from
27 or relate to my employment with the Company or any of its
28 affiliates or the termination of my employment with the
Company or any of its affiliates (including, without
limitation, claims under the Age Discrimination in Employment

1 Act, the California Fair Employment and Housing Act,
2 California Labor Code Section 200 *et seq.*, and any applicable
California Industrial Welfare Commission order).

3 (Rock Decl. ¶¶ 12, 13 & Ex. C ¶ 3, Ex. E ¶ 3.)

4 The Butlers assert six causes of action relating to
5 Defendants' alleged failure to pay them for all hours worked. These
6 include: (1) a claim for failure to pay wages under California
7 Labor Code section 1194 and Industrial Welfare Commission Wage
8 Order No. 4-2001; (2) a claim for failure to pay overtime under
9 California Labor Code section 510 and Industrial Welfare Commission
10 Wage Order No. 4-2001; (3) a claim for inaccurate wage statements
11 under California Labor Code section 226; (4) a claim for breach of
12 contract for "failing to pay ... a fixed wage for all time worked
13 on behalf of Defendants"; (5) a claim for quantum meruit for
14 "working on [Defendants'] behalf without compensation"; and (6) a
15 claim for unfair compensation for "failure to pay ... all hours
16 worked." (Dkt. No. 29-1 (Counts 2, 3, 4, 5, 6, and 8).)

17 All six claims are within the scope of the terms of the
18 Release. The first three claims--based on Labor Code section 200 *et*
19 *seq* and California Industrial Welfare Commission Wage Order No. 4-
20 2001--are within the express terms of the Release. The remaining
21 three claims plainly "arise from or relate to [the employees']
22 employment." (Release ¶ 3.) Plaintiffs do not contend otherwise.

23 **ii. The Releases Apply to 21st Century**

24 Plaintiffs assert that the Releases do not apply to 21st
25 Century because they do not sufficiently identify 21st Century as a
26 released party. (Opp. at 3.)

27 "Under statutory rules of contract interpretation, the mutual
28 intention of the parties at the time the contract is formed governs

1 its interpretation. (Civ.Code, § 1636.) Such intent is to be
2 inferred, if possible, solely from the written provisions of the
3 contract." Montrose Chem. Corp. v. Admiral Ins. Co., 10 Cal.4th
4 645, 666 (1995). A "release does not discharge nonparties unless
5 the contracting parties so intend." Lexington Ins. Co. v. Sentry
6 Select Ins. Co., 2009 WL 1586938 (E.D. Cal. June 5, 2009) (citing
7 Westlye v. Look Sports, Inc., 17 Cal.App.4th 1715, 1729 (1993).)

8 As noted above, the Release applies to "all claims ... against
9 the Company, its affiliated companies ... or any of its
10 affiliates..." (Release ¶ 3.) While the Release defines "the
11 Company" as Farmers Group, Inc., it does not define "affiliated
12 companies" or "affiliates." (Id.) Plaintiffs contend that the
13 absence of such definitions renders the Release susceptible to more
14 than one interpretation and thus not amenable to summary judgment.
15 (Id.)

16 This argument fails for at least four reasons. First, it is
17 undisputed that Farmers Group, Inc. acquired 21st Century on July
18 1, 2009, well before the Releases were executed by Anthony and
19 Jennifer Butler, respectively, in December 2009 and January 2010.
20 (Rock Decl. Ex B at 1.) Because 21st Century was a unit of "the
21 Company" (i.e. Farmers), a release of claims against "the Company"
22 entails a release of claims against 21st Century. (Id. ¶ 2.) 21st
23 Century is not a nonparty.

24 Second, the Release in fact explicitly refers to 21st Century,
25 stating that the signatory may revoke the Release within seven days
26 by sending notice to a representative of 21st Century. (Rock Decl.
27 Ex ¶ 2.) As Defendants note, if the Release were not intended to
28

1 apply to 21st Century, the reference to 21st Century would make
2 little sense. (Reply at 4.)

3 Third, the Farmers Group Inc. Severance Plan for Personal Auto
4 Group Employees, which is the subject of and is explicitly referred
5 to in the Release, makes clear that the Plan applies to employees
6 of 21st Century. (Release ¶ 2.) The Plan defines an "Eligible
7 Employee" to include "each person who immediately prior to July 1,
8 2009 was an active employee of the Purchased Companies and
9 Subsidiaries." (Id. ¶ 1.02.) The Plan in turn defines "Purchased
10 Companies and Subsidiaries" to include "21st Century Insurance
11 Company." (Id. ¶ 1.03.)

12 Fourth, the record indicates that both Anthony and Jennifer
13 Butler understood that they were employed by 21st Century, rather
14 than Farmers, throughout their employment at the Woodland Hills
15 facility. (See Supplemental Declaration of Daniel C. Whang, Ex. I
16 (Deposition of Anthony Butler) at 23:22-24:5; id., Ex. J
17 (Deposition of Jennifer Butler) at 21:25-22:12.) As the Release
18 refers only to claims arising from the signatory's employment, it
19 is implausible that the Butlers would have intended to release
20 claims against Farmers but not against 21st Century. Plaintiffs
21 have offered no evidence that the Butlers harbored such an
22 intention.

23 In sum, there is no basis for dispute that the Releases apply
24 to 21st Century.

25 **iii Defendants Did Not Waive Their Release-Based Defense**

26 Plaintiffs contend on two grounds that Defendants' summary
27 judgment motion must be denied because Defendants have waived their
28 Release-based affirmative defense.

1 First, Plaintiffs contend that Defendants waived the defense
2 by not properly asserting it in their Answer to Plaintiffs' Second
3 Amended Complaint. (Opp. at 4.) Defendants' Eighth Affirmative
4 Defense denied each cause of action on the basis of "accord and
5 satisfaction" and "compromise, settlement or release agreements."
6 (Dkt. No. 46 at 32.¹) Plaintiffs assert that the lack of
7 specificity as to the plaintiffs and claims to which the defense
8 applied rendered the defense inadequate because it "failed to give
9 Plaintiffs fair notice of the Defendants' factual bases for
10 opposition to their claims." (Opp. at 4-5.) The argument is
11 unsuccessful.

12 The Ninth Circuit has "liberalized the requirement that
13 defendants must raise affirmative defenses in their initial
14 pleadings," at least to the extent that the delay does not
15 prejudice the plaintiff. Magana v. Com. of the N. Mariana Islands,
16 107 F.3d 1436, 1446 (9th Cir. 1997); see also Healy Tibbitts Const.
17 Co. v. Ins. Co. of N. Am., 679 F.2d 803, 804 (9th Cir. 1982) ("The
18 defendant should be permitted to raise its policy exclusions
19 defense in a motion for summary judgment, whether or not it was
20 specifically pleaded as an affirmative defense, at least where no
21 prejudice results to the plaintiff.")

22 Here, even assuming that Defendants' affirmative defenses were
23 not sufficient to provide adequate notice, Plaintiffs have not
24

25 ¹ Defendants' Eighth Affirmative Defense reads in full: "The
26 [Second Amended Complaint], and each and every cause of action
27 alleged therein, is barred, in whole or in part, pursuant to an
28 accord and satisfaction, and are barred to the extent that
Plaintiffs or any reasonably purportedly similarly situated persons
have entered into or otherwise bound by compromise, settlement, or
release agreements regarding those claims." (Dkt. No. 46 at 32.)

1 identified any material prejudice they have suffered as a result of
2 the delay. Any assertion that Plaintiffs have suffered prejudice is
3 undermined by the fact that the Butlers have had a copy of the
4 Release in their possession since at least January 2010.
5 (Declaration of Daniel Whang in Support of Opposition to
6 Plaintiffs' Motion for Relief Under Rules 26 and 37 ¶ 6 & Ex. M;
7 Id. ¶ 7 & Ex. N.) Plaintiffs cannot reasonably assert that they
8 have been prejudiced by the late disclosure of a document they
9 already had in their possession and which the exercise of due
10 diligence should have discovered. See Fonseca v. Sysco Food Servs.
11 of Arizona, Inc., 374 F.3d 840, 846 (9th Cir. 2004) (late
12 disclosure harmless where evidence was already in other party's
13 possession).

14 Nor can Plaintiffs assert that the delay in disclosing the
15 Releases denied them a fair opportunity to litigate the issue.
16 Plaintiffs have had more than seven months to develop and make
17 their case regarding the Releases since the court issued its
18 September 24, 2013 Order deferring a ruling on the status of the
19 21st Century employees so that Plaintiffs would have a full and
20 fair opportunity to respond on the matter. (Dkt. No. 248.)
21 Moreover, the court specifically ordered Defendants to file the
22 instant summary judgment motion to ensure that the court had a full
23 factual record and adequate briefing to decide the matter. (Dkt.
24 No. 278.)

25 Finally, it is significant that the Butlers received
26 substantial additional compensation in exchange for signing the
27 Releases. (Rock Decl. Exs. C-F.)
28

1 Second, Plaintiffs contend that Defendants have waived their
2 Release-based defense by failing to raise the issue at an earlier
3 stage in the litigation, such as in their motion to dismiss filed
4 in October 2011 or in response to the court's order for
5 supplemental briefing on jurisdictional issues in February 2013.
6 (Opp. at 6-10.)

7 This argument likewise fails. As both parties note, "[a]
8 waiver is an intentional relinquishment or abandonment of a known
9 right or privilege." Groves v. Prickett, 420 F.2d 1119, 1125 (9th
10 Cir. 1970). Here, there is no basis to conclude that Defendants
11 intentionally relinquished or abandoned their release-based
12 defense. To the contrary, as noted, it is undisputed that
13 Defendants brought the issue of the Releases to Plaintiffs'
14 attention on the same day they discovered them in August 2013 and
15 shortly thereafter informed the court of their arguments in the
16 context of opposing modification of the Rule 23 class to include
17 21st Century employees. (See Dkt. No. 244 at 6; Dkt. No. 270
18 (Declaration of George Preones ¶ 6).)

19 Plaintiffs contend that the alleged waiver of the Release-
20 based defense may be analyzed under the framework developed for
21 waiver of the contractual right to arbitration. (See Opp. at 7.)
22 Under this standard, to demonstrate waiver of the right to
23 arbitrate, a party must show: (1) knowledge of an existing right to
24 compel arbitration; (2) acts inconsistent with that existing right;
25 and (3) prejudice to the party opposing arbitration resulting from
26 such inconsistent acts. Park Place Associates, Ltd., 563 F.3d. 907,
27 921 (9th Cir. 2009) (citation and quotation marks omitted).
28 Plaintiffs have not cited and the court is not aware of authority

1 applying this framework outside of the context of an agreement to
2 arbitrate. However, assuming the rule is applicable, Plaintiffs'
3 argument fails because, for the reasons stated above, Plaintiffs
4 have not demonstrated the required element of prejudice.

5

6 For the foregoing reasons, the court concludes that Defendants
7 are entitled to summary judgment as to all claims asserted by
8 Jennifer Butler and Anthony Butler.

9

10 **B. Plaintiffs' Motion for Relief Under Rules 26 and 37**

11 The court next considers Plaintiffs' Motion for Relief Under
12 Rules 26 and 37. (Dkt. No. 260.)

13 As an initial matter, the court notes that this motion was
14 procedurally improper because Plaintiffs failed to meet and confer
15 with Defendants prior to its filing as required by Local Rule 37-1.
16 The Court expects the parties to meet and confer as required by the
17 Local Rules and to use their best efforts to resolve any and all
18 differences. Failure to comply with this requirement will not be
19 tolerated going forward. Nonetheless, with respect to the instant
20 matter, in the interest of reaching a just resolution on the
21 merits, the court has considered the Motion.

22 Plaintiffs first contend that exclusion of the releases is
23 justified under Rule 37(c)(1) as a result of Defendants' alleged
24 violations of Rule 26(a) and (e). (See Motion at 11.) Rule 26(a)
25 requires parties to make initial disclosures, without awaiting a
26 discovery request, of copies of documents (or a description
27 thereof) that it has in its possession, custody, or control and
28 that it may use to support its claims or defenses. Rule 26(e)

1 requires that parties supplement or correct their disclosures "in a
2 timely manner if the party learns that in some material respect the
3 disclosure or response is incomplete or incorrect, and if the
4 additional or corrective information has not otherwise been made
5 known to the other parties during the discovery process or in
6 writing." Plaintiffs assert that Defendants should have produced
7 the releases in their initial disclosures or supplemented their
8 disclosures and responses. (See Dkt. No. 260-1 at 8.)

9 The court is unpersuaded. Defendants have provided what the
10 court concludes is a reasonable explanation for their failure to
11 identify and produce the records in their Rule 26(a) disclosures:
12 Defendants incorrectly assumed that any releases signed by the
13 Butlers and other Woodland Hills employees would have been included
14 in their personnel files, an assumption with which Plaintiffs
15 apparently agreed. (Declaration of George Preonas in Support of
16 Defendants' Opposition to Plaintiffs' Motion for Relief Under Rules
17 26 and 37 ¶¶ 3-4 & Ex. G at 50:14-19.) Defendants' counsel
18 explained the circumstances as follows:

19 The releases were not contained in personnel files. Rather,
20 the releases for the former employees at the Woodland Hills
21 facility were stored offsite along with other documents
22 collected from the Woodland Hills facility after that facility
23 was shut down over three years ago. Many of the Human
24 Resources personnel, who would have been responsible for the
administration of the releases, were laid off when the
Woodland Hills facility closed. This appears to be the reason
why the releases were not kept in the personnel files of
former employees who worked at the Woodland Hills facility.

25 (Id. ¶ 4.) The court has no basis to doubt Defendants' explanation,
26 particularly given that production of the records at an earlier
27 juncture would have significantly benefitted Defendants because it
28 likely would have obviated significant litigation expenses related

1 to the 21st Century employees. Because it appears Defendants were
2 not aware of the documents at the time of their initial
3 disclosures, the court does not find a Rule 26(a) violation.

4 As to Rule 26(e), Defendants were not required to supplement
5 or correct their disclosures because the Releases had "otherwise
6 been made known to [Plaintiffs] during the discovery process." Rule
7 26(e)(1)(a). Indeed, Defendants' counsel informed Plaintiffs'
8 counsel of the releases on the same they discovered them--August 2,
9 2013--and then promptly produced the Releases and related documents
10 within the following week. (Preonas Decl. ¶¶ 5-6 & Exs. A-D.)

11 Because neither Rule 26(a) or (e) were violated, no relief is
12 warranted under Rule 37(c)(1).

13 Second, Plaintiffs assert that Defendants violated Rule
14 37(b)(2)'s requirement that parties obey court orders by failing to
15 provide certifications for their supplemental discovery responses.
16 Plaintiffs do not specify what relief they believe is warranted.
17 While the court expects full compliance with its orders, the court
18 is not persuaded that any sanction is necessary to remedy any
19 prejudice suffered by Plaintiffs or to ensure compliance going
20 forward in this case. As Plaintiffs acknowledge, although Defendant
21 apparently did not provide the required certifications along with
22 their earlier supplemental productions, Defendants did so in their
23 most recent production on February 12, 2014. (See Declaration of
24 William X. King in Support of Plaintiff's Motion for Relief Under
25 Rules 26 and 37 Ex. 9.1 at 14-15.) The court also notes that the
26 Magistrate has not issued sanctions with respect to this issue.

27 Third, Plaintiffs assert that Defendants have violated Rule
28 26(g) because they have failed to conduct a "reasonable inquiry" to

1 ensure that their discovery requests or responses are complete and
2 correct. The court is not persuaded that relief is warranted. For
3 the reasons discussed above, the court accepts Defendants'
4 explanations as to why the Releases were not discovered and
5 produced earlier.

6 Accordingly, Plaintiffs are not entitled to the relief sought
7 in their Motion for Relief Under Rules 26 and 37.

8
9 **III. Motion to Deny Class Certification as to 21st Century Class**

10 Finally, in light of the discussion above, the court considers
11 Defendants' Motion to Deny Class Certification as to the 21st
12 Century Class. (Dkt. No. 256.) As discussed at the outset, the
13 Motion is effectively a supplemental opposition to Plaintiffs'
14 Motion to Modify and Clarify Class Definitions, wherein Plaintiffs
15 request that the court modify the Rule 23 class action definition
16 to include employees of 21st Century. (Dkt. No. 240.)

17 **A. Legal Standard**

18 A district court's order granting class certification is
19 subject to later modification. See Fed. R. 23(c)(1)(C) ("An order
20 that grants or denies class certification may be altered or amended
21 before final judgment."); Coopers & Lybrand v. Livesay, 437 U.S.
22 463, 469 n. 11, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978) (describing a
23 court's class certification order as "inherently tentative"); see
24 also Officers For Justice v. Civil Serv. Comm'n, 688 F.2d 615, 633
(9th Cir. 1982).

25 The party seeking class certification bears the burden of
26 showing that each of the four requirements of Rule 23(a) and at
27 least one of the requirements of Rule 23(b) are met. See Hanon v.
28

1 Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). Rule 23(a)
2 sets forth four prerequisites for class certification:

3 (1) the class is so numerous that joinder of all members is
4 impracticable; (2) there are questions of law or fact
5 common to the class; (3) the claims or defenses of the
6 representative parties are typical of the claims or
7 defenses of the class; and (4) the representative parties
8 will fairly and adequately protect the interests of the
9 class.

10 Fed. R. Civ. P. 23(a); Hanon, 976 F.2d at 508. These four
11 requirements are often referred to as numerosity, commonality,
12 typicality, and adequacy. See Gen. Tel. Co. of Southwest v. Falcon,
13 457 U.S. 147, 156 (1982). The U.S. Supreme Court has emphasized
14 that "it may be necessary for the court to probe behind the
15 pleadings before coming to rest on the certification question, and
16 that certification is proper only if the trial court is satisfied,
17 after a rigorous analysis, that the prerequisites of Rule 23(a)
18 have been satisfied." Comcast Corp. v. Behrend, 133 S. Ct. 1426,
19 1432, 185 L. Ed. 2d 515 (2013) (quotation marks and citations
20 omitted). "Such an analysis will frequently entail overlap with the
21 merits of the plaintiff's underlying claim. That is so because the
22 class determination generally involves considerations that are
23 enmeshed in the factual and legal issues comprising the plaintiff's
24 cause of action." Id. (quotation marks and citations omitted).

25 Prior to reaching the question whether class certification is
26 appropriate, however, the court must be satisfied that the person
27 seeking to represent the class has standing to invoke the court's
28 jurisdiction. "[S]tanding is the threshold issue in any suit. If
the individual plaintiff lacks standing, the court need never reach
the class action issue." Lierboe v. State Farm Mut. Auto. Ins. Co.,
350 F.3d 1018, 1022 (9th Cir. 2003) (quoting 3 Herbert B. Newberg

1 on Class Actions § 3:19, at 400 (4th ed. 2002)). To invoke the
2 jurisdiction of a federal court, a plaintiff must assert a "case"
3 or "controversy" within the meaning of Article III of the U.S.
4 Constitution. To do so, a plaintiff must show that she has suffered
5 an injury in fact that is traceable to the defendant's conduct and
6 is capable of being redressed by the court. See Lujan v. Defenders
7 of Wildlife, 504 U.S. 555, 560-61 (1992).

8 When a named plaintiff has no cognizable claim for relief,
9 "she cannot represent others who may have such a claim, and her bid
10 to serve as a class representative must fail." Lierboe v. State
11 Farm Mut. Auto. Ins. Co., 350 F.3d at 1022. See also Boyle v.
12 Madigan, 492 F.2d 1180, 1182 (9th Cir. 1974) ("Until [the named
13 plaintiffs] can show themselves aggrieved in the sense that they
14 are entitled to the relief sought, there is no occasion for the
15 court to wrestle with the problems presented in considering whether
16 the action may be maintained on behalf of the class.")

17 **B. Discussion**

18 Defendants first assert that the Butlers may not serve as
19 class representatives because, having signed the Releases, they
20 lack standing to pursue not only their own claims, but also
21 certification as to any class or subclass of 21st Century
22 employees. (Motion at 10.) While the court is not aware of any case
23 that closely parallels the unique facts of the instant case,
24 Defendants' position is well supported. Under Ninth Circuit
25 authority, a plaintiff relinquishes standing to act as a class
26 representative if she agrees to a private settlement releasing her
27 claims and any other interests she formerly had in class
28 representation. See Sanford v. MemberWorks, Inc., 625 F.3d 550, 557

1 (9th Cir. 2010) (class representative who entered into a settlement
2 agreement in which she agreed to release underlying claims
3 relinquished standing to pursue class action claim on appeal);
4 Narouz v. Charter Commc'ns, LLC, 591 F.3d 1261, 1264 (9th Cir.
5 2010) (class representative lost standing to appeal denial of class
6 certification by "release[ing] any and all interests he or she may
7 have had in class representation through a private settlement
8 agreement."). While Sanford and Narouz involved settlements reached
9 after the lawsuits were filed but before the filing of an appeal,
10 the court is aware of no reason why agreements releasing claims
11 reached before filing a lawsuit should not likewise preclude a
12 plaintiff from pursuing such claims.

13 As explained above, the court concludes that Jennifer and
14 Anthony Butler have no viable causes of action against Defendants
15 as a result of their signing Releases relinquishing all claims
16 arising from their employment with Defendants. As a result, there
17 remains no case or controversy before the court as to the Butlers'
18 claims. The Butlers' bid to represent employees of 21st Century
19 therefore fails. O'Shea v. Littleton, 414 U.S. 488, 494 (1974)
20 ("[I]f none of the named plaintiffs purporting to represent a class
21 establishes the requisite of a case or controversy with the
22 defendants, none may seek relief on behalf of himself or any other
23 member of the class.")

24 In opposing Defendants' motion, Plaintiffs make various
25 arguments to the effect that Defendants waived their release-based
26 defense. (Opposition at 2-8.) Plaintiffs' waiver arguments fail for
27 the reasons discussed in the previous subsections.
28

1 Plaintiffs also contend that, even if the Butlers are
2 dismissed as class representatives, David Ribot ("Ribot") may serve
3 as the class representative for the California subclass.
4 (Opposition at 12.) The court does not agree.

5 Ribot was employed only at the facility operated by Farmers in
6 Simi Valley, California. (Declaration of Christopher Crosman in
7 Support of Motion to Deny Certification ¶ 3 & Ex. A at 38:10-15.)
8 He never worked at the Woodland Hills facility or any other 21st
9 Century facility. It is undisputed that Ribot never signed any
10 release of his claims, (see Reply at 12), but that all or nearly
11 all employees of the Woodland Hills facility did sign releases.
12 (See Reply at 10.) As a result, Ribot does not meet the requirement
13 of typicality as a representative of the 21st Century Woodland
14 Hills employees. Plaintiffs cannot establish that "the claims or
15 defenses of the representative parties are typical of the claims or
16 defenses of the class," Rule 23(a)(3), because Defendants' key
17 defense of release of claims is applicable to 21st Century
18 employees but is not applicable to Ribot.

19 Because no named Plaintiff satisfies the requirements to serve
20 as a representative of 21st Century Woodland Hills employees, 21st
21 Century cannot be included in the certified Rule 23 class.

22

23 **III. Conclusion**

24 For the reasons set forth herein, Defendants' Motion for
25 Partial Summary Judgment (Dkt. No. 279) is GRANTED; Plaintiffs'
26 Motion for Relief Under Rules 26 and 37 (Dkt. No. 260) is DENIED;
27 Plaintiffs' Motion to Modify and Clarify Class Definitions (Dkt.
28 No. 240) is DENIED in part insofar as it requests that 21st Century

1 be added to the Rule 23 state law class definition; and Defendants'
2 Motion to Deny Certification as to 21st Century Class (Dkt. No.
3 256) is GRANTED.

4

5 IT IS SO ORDERED.

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Dated: June 4, 2014

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DEAN D. PREGERSON

United States District Judge

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